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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/601,913	08/08/2000	Sergei Mikhailovich Safronov	V-177	5275

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DELLETT AND WALTERS
P. O. BOX 2786
PORTLAND, OR 97208-2786

EXAMINER

RADA, ALEX P

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/601,913

Applicant(s)

SAFRONOV ET AL.

Examiner

Alex P. Rada

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. In view of the Appeal Brief filed on April 27, 2005, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Request for Information Under 37CFR 1.105

2. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information (below) that the examiner has determined is reasonably necessary to the examination of this application.

3. The names and citation of any particularly relevant indexed journal, or treatise.

4. The information is required to document the level of skill and knowledge in the art of implementing a game to play in outer/cosmic space and the devices/components used to implement the game.

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5. The information is required to identify products and services embodying the disclosed subject matter of playing games in space that require physical space craft/vehicle and identify the properties of similar products and services found in the prior art.

6. The information is required to enter in the record the art suggested by the applicant as relevant to this examination in the background of the specification on page one regarding Alan Wilkes's Encyclopedia of Games of Chance, CH. 4.

7. In response to this requirement, please provide a list of citations to electronically searchable databases or other indexed collections containing publications that document the knowledge within the disclosed art of playing games in space using space type vehicles.

8. In response to this requirement, please provide a copy of each of the following items of art referred to in the background of the invention. Chapter four of the Encyclopedia of Games of Chance, by Alan Wikes, published by EFRAT, 1994.

9. In response to this requirement, please provide copies of each publication, which any of the applicants authored or co-authored and which describe the disclosed subject matter of playing a game in outer/cosmic space and the devices used to implement the game.

10. In response to this requirement, please provide the trade names and providers of any goods or services in competition with the goods or services the claimed subject matter has been embodied in.

11. In response to this requirement, please provide the title, citation and copy of each publication that is a source used for the description of the prior art in the disclosure. For each publication, please provide a concise explanation of that publication's contribution to the description of the prior art.

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12. In response to this requirement, please provide the title, citation and copy of each publication that any of the applicants relied upon to develop the disclosed subject matter that describes the applicant's invention, particularly as to developing of the space vehicles along with the system and process of the game. For each publication, please provide a concise explanation of the reliance placed on that publication in the development of the disclosed subject matter.

13. In response to this requirement, please provide the title, citation and copy of each publication that any of the applicants relied upon to draft the claimed subject matter. For each publication, please provide a concise explanation of the reliance placed on that publication in distinguishing the claimed subject matter from the prior art.

14. In response to this requirement, please state whether any search of prior art was performed. If a search was performed, please state the citation for each prior art collection searched. If any art retrieved from the search was considered material to demonstrating the knowledge of a person having ordinary skill in the art to the disclosed space game, please provide the citation for each piece of art considered and a copy of the art.

15. In responding to those requirements that require copies of documents, where the document is a bound text or a single article over 50 pages, the requirement may be met by providing copies of those pages that provide the particular subject matter indicated in the requirement, or where such subject matter is not indicated, the subject matter found in applicant's disclosure.

The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained may be accepted as a complete reply to the requirement for that item.

This requirement is an attachment of the enclosed Office action. A complete reply to the enclosed Office action must include a complete reply to this requirement. The time period for reply to this requirement coincides with the time period for reply to the enclosed Office action.

Claim Rejections - 35 USC § 101

16. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

17. Claims 1-16 are rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility and is directed to non-statutory subject matter. .

Applicant asserts that the invention has utility as a method of generating a random event for wagering purposes. However, this utility is not credible because Applicant has not and cannot reduce the invention to actual practice. Nor can anyone skilled in the art practice this invention. Since the invention cannot be practiced with the technology now in existence, it has no utility. Thus the claimed invention is rejected under 35 USC §101.

For the claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result.

In the present case, claims 1-16 do not provide a concrete and tangible result. The claims merely recite allotting a payoff but it does not produce a concrete and tangible result. The end result of the payoff is never awarded to a person.

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berman (US 5,035,422) in view of admitted prior art.

20. Berman generally discloses accepting bets on a registration of a game performed by game elements, in which the examiner interprets a lottery game or wagers on different sporting events to be an equivalent to the game elements, determining the outcome of the wagering event, and provide a payout as recited in claims 1, 12-13, and 16.

Berman does not expressly disclose game event performed by game elements that are capable of moving in space, registering a game event using a facility by a spatial portion of the game elements relative to the game assessment means located in the same space.

Applicant's admitted prior art in the background of the specification teaches a method of conducting a game including a game event performed by game elements which are capable of moving in space, and registering a game event occurrence using a facility by a spatial position of the game elements relative to at least one game event assessment means located in the same space. By conducting a game performed by game elements capable of moving in space, one of ordinary skill in the art provide an unbiased gaming outcome.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Berman to include a game event performed by game elements which

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are capable of moving in space, and registering a game event occurrence using a facility by a spatial position of the game elements relative to at least one game event assessment means located in the same space as applicant's admitted prior art to provide an unbiased gaming outcome.

At the time the invention was made, it would have been obvious design choice to provide different elements that match the theme of the embodiment of a game. For example, horses and jockeys for a horse racing game (Brenner), indicia on reels for slot machines, numbers to choose from and a random number generator for a lottery bingo type game, and teams (i.e. basketball, football, soccer, hockey) for sport type games. By having different elements that match the embodiment of a game, one of ordinary skill in the art would provide the necessary components to play a particular game.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex P. Rada whose telephone number is 571-272-4452. The examiner can normally be reached on Monday - Friday, 08:00-16:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



DERRIS H. BANKS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700


APR